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No. 87-642

In the Supreme Court of the United States

OCTOBER TERM, 1987

JAMES W. LEE, ET AL., PETITIONERS

v.

EKLUTNA, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners' suits against the United States claiming title to land under the homestead laws are barred by the 12-year statute of limitations in the Quiet Title Act, 28 U.S.C. 2409a(g), because petitioners knew or should have known of the United States' claim to the land when their homestead claims were denied by the Secretary of the Interior in 1961 and 1964.

2. Whether the United States is an indispensable party to petitioners' suits against the respondent Alaska Native corporations that hold the disputed land under patents issued by the United States pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, because, under ANCSA, the effect of a judgment in petitioners' favor would be to enable the Native corporations to obtain additional land from the United States.

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OPINIONS BELOW

The second amended opinion of the court of appeals (Pet. App. 2a-15a) is reported at 809 F.2d 1406. The opinion of the district court (Pet. App. 16a-47a) is reported at 629 F. Supp. 721.

JURISDICTION

The judgment of the court of appeals (Pet. App. 48a-49a) was entered on March 10, 1987, and a timely petition for rehearing was denied on July 22, 1987 (Pet. App. 50a-51a). The petition for a writ of certiorari was filed on October 19, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case concerns the ownership of several parcels of land in the Eagle River Valley near Anchorage, Alaska. The land in question was patented by the United States in 1979 to two Native corporations that were established

under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.* Prior to that time, however, the land was included in Power Site Classification 399, which was issued by the United States Geological Survey in 1950, pursuant to 43 U.S.C. 31 and Section 24 of the Federal Power Act, 16 U.S.C. 818.[1]

Section 24 of the Federal Power Act provides that land included in a proposed power project site shall be "reserved from entry, location, or other disposal under the laws of the United States * * *." The issuance of Classification 399 in 1950 therefore had the effect of withdrawing the parcels at issue in this case from entry under the public land laws (Pet. App. 6a). Section 24 of the Federal Power Act further provides that if the FPC determines that any of the land set aside for a power site will not be injured or destroyed for purposes of power development if it is made available for location, entry, or selection under the public land laws, the Secretary of the Interior, after giving 90 days' notice to the Governor of the State, shall declare the land open to entry under those laws. In 1952, the FPC determined that certain land covered by Power Site Classification 399 would not be injured for purposes of power development by location or entry under the public land laws. However, the Secretary of the Interior did not thereafter revoke the withdrawal and declare the land open for entry or settlement. Pet. App. 6a, 17a-18a.

In 1957, each of the three petitioners settled on a separate parcel of land in the Eagle River Valley, with the expectation of homesteading it.[2] Some of the land on

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[1] The FPC has since been abolished and its duties have been transferred to the Secretary of Energy and the Federal Energy Regulatory Commission. See 42 U.S.C. 7151(b), 7171(a), 7172(a), 7291 and 7293.

[2] Petitioners Lee and Eklund settled on two of the parcels. Petitioner Carr is the widow of Warren Carr, who was the actual entryman on the third parcel. For the sake of convenience, we shall refer to all three entrymen as petitioners.

which petitioners settled was open for homesteading. However, the Bureau of Land Management (BLM) informed petitioners that other portions of their proposed homestead sites—the portions at issue here—were within Power Site Classification 399 and for that reason were not available for entry until BLM formally opened them for settlement. Similarly, the Assistant Secretary informed petitioners in 1959 that portions of their proposed homestead sites were not open to entry; that further action by the Department of the Interior with respect to the land would have to await completion of an engineering survey; and that even if the power site withdrawal were revoked, the State of Alaska and veterans would have preference rights. Pet. App. 6a-7a, 17a-18a.

In 1961, BLM filed a platted survey of the area that delineated, inter alia, the boundaries of Classification 399 in relation to the potential homestead sites selected by petitioners. 26 Fed. Reg. 2486 (1961). Immediately thereafter, on April 27, 1961, BLM issued final decisions rejecting petitioners' entries insofar as they conflicted with the power site withdrawal. Finally, in 1964, petitioners entered into compromise arrangements with BLM that enabled them to submit proof of occupancy for those portions of their proposed entries that were located outside the withdrawal area and to receive patents from the United States for those portions. Pet. App. 7a, 18a-19a; see Eklutna Br. in Opp. 3-5.

2. On December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, which was intended, inter alia, to settle the aboriginal land claims of Native Alaskans. Under Section 4 of the Act, 43 U.S.C. 1603, all claims of aboriginal title in Alaska were extinguished. See *Amoco Production Co.* v. *Village of Gambell,* No. 85-1239 (Mar. 24, 1987), slip op. 3-4. At the same time, Congress provided for regional and village Native corporations organ-

ized under ANCSA to select and receive title to public land in Alaska. See 43 U.S.C. 1610-1614. Pursuant to these provisions, the Native village corporation of Eklutna filed a land selection that included the parcels at issue here. In 1979, the United States issued Eklutna a patent to the surface estate in the land and issued Cook Inlet Region, Inc., the regional Native corporation for the area, a corresponding patent to the subsurface estate. Pet. App. 20a.

3. In 1979, 1980 and 1982, petitioners filed the instant consolidated actions against the Native corporations and the United States. In their amended complaints, petitioners sought (i) patents from the United States to the portion of the Native corporations' land for which petitioners had sought to make homestead entries some years earlier, and (ii) a ruling that the Native corporations held those portions subject to a constructive trust for the benefit of petitioners. Pet. App. 20a-21a.[3]

On January 23, 1985, the district court granted summary judgment in favor of the respondents (Pet. App. 16a-47a). The court held that under *Block* v. *North Dakota,* 461 U.S. 273 (1983), petitioners' claims against the United States for patents to the land are governed by the Quiet Title Act (QTA), 28 U.S.C. 2409a, and are barred by that Act (Pet. App. 22a-23a). The court first held that, because the United States disclaimed all title to the parcels at issue here when they were patented to the Native corporations in 1979, the court lacked jurisdiction under the QTA by virtue of 28 U.S.C. 2409a(e),[4] which

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[3] Petitioners also filed monetary claims against the United States for an alleged taking of their property. The district court dismissed those claims, holding that because the amount in controversy exceeded $10,000, the Claims Court had exclusive jurisdiction under 28 U.S.C. 1491 (Pet. App. 45a-46a). Petitioners did not seek review of that ruling in the court of appeals.

[4] In 1986, after the district court rendered its decision, Congress added a new Subsection (c) to 28 U.S.C. 2409a, and succeeding

provides that the QTA jurisdiction of the district court shall cease if the United States disclaims all interest in the land (Pet. App. 23a-24a). In addition, the court held that these suits are barred by the 12-year statute of limitations in 28 U.S.C. 2409a(g), because petitioners knew or should have known of the United States' claim to the land in 1961, when BLM issued the final decisions denying their homestead claims, or at the very latest in 1964, when petitioners reached compromise agreements with BLM under which they were granted patents only for the portions of their original entries that were outside the withdrawal area (Pet. App. 25a-26a).

The district court also rejected petitioners' claims against the respondent Native corporations (Pet. App. 29a-42a). Relying on *Milwaukee* v. *Illinois*, 451 U.S. 304, 313-319 (1981), the court first held that the comprehensive statutory framework of ANCSA precludes suits based on a common law theory of constructive trust with respect to lands patented to Native corporations under ANCSA (Pet. App. 29a-34a). The court then concluded that under the operative statutory provision—Section 22(b) of ANCSA, 43 U.S.C. 1621(b)—claims under the homestead laws must be presented to the Secretary prior to the issuance of a patent to a Native corporation, so that land covered by homestead entries may be excluded from the grant to the Native corporation (Pet. App. 33a-41a). Accordingly, the court held that petitioners have no cause of action against the respondent Native corporations under Section 22(b) of ANCSA because that Section imposes obligations only on the Secretary (Pet. App. 41a-42a) and that petitioners have no cause of action against the federal respondents under Section 22(b) of ANCSA because any such cause of action

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subsections were redesignated accordingly. See Act of Nov. 4, 1986, Pub. L. No. 99-598, 100 Stat. 3351. The citations in the text are to the amended version of 28 U.S.C. 2409a.

was barred by the QTA before the land in question was patented to the Native corporations under ANCSA (Pet. App. 42a-44a).

4. The court of appeals affirmed the judgment of the district court in favor of both the federal and the non-federal respondents (Pet. App. 2a-14a). The court of appeals agreed with the district court that petitioners' claims against the United States are governed by the QTA and are barred by that Act, because the United States has disclaimed title to the land since it was conveyed to the Native corporations in 1979 and because the 12-year period within which a QTA action could be filed had in any event expired (Pet. App. 9a-12a).

The court of appeals also affirmed the district court's dismissal of petitioners' actions against the respondent Native corporations, on the ground that the United States is an indispensable party that cannot be joined because of the bars to suit under the QTA (Pet. App. 13a-14a). The court acknowledged that the QTA directly governs only suits against the United States and that generally a claimant who cannot sue the United States under that Act is not thereby barred from suing a non-federal party who claims an interest in the same parcel of land (*id.* at 13a). But the court reasoned that in order for petitioners to challenge the patents issued to the Native corporations in this case, they must first establish their own prior entitlement to the land in question – a result that could be accomplished only in direct proceedings against the United States (*id.* at 13a-14a).

ARGUMENT

The court of appeals correctly affirmed the district court's dismissal of petitioners' claims against both the United States and the Native corporations. That dismissal, under the unique statutory framework of the Alaska Native Claims Settlement Act, does not conflict with any

decision of this Court or of another court of appeals, and it presents no question of general importance warranting review by this Court. The petition for a writ of certiorari therefore should be denied.

1. a. The court of appeals correctly held that petitioners' claims against the United States are barred by the 12-year statute of limitations in the Quiet Title Act. Under 28 U.S.C. 2409a(g), any QTA action is barred "unless it is commenced within twelve years of the date upon which it accrued," and an action "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." Both courts below found that petitioners knew or should have known of the United States' claim to the land in1961, when BLM rendered the final decisions denying their homestead claims, or at the very latest in 1964, when petitioners entered into compromise agreements that enabled them to obtain homestead patents only to the portions of their proposed entries that were outside the power-site withdrawal area. See Pet. App. 11a, 25a-27a. Those dates are more than 12 years prior to the filing of the instant suits against the United States beginning in 1979, and petitioners' claims against the United States therefore are time-barred.

b. Petitioners do not challenge the determination by both courts below that they knew or should have known of the adverse claim of the United States more than 12 years before they filed suit, and that fact-bound issue does not in any event warrant review by this Court. However, relying on this Court's decision in *Bowen* v. *City of New York*, No. 84-1923 (June 2, 1986), petitioners contend (Pet. 37-42) that the running of the 12-year statute of limitations under the QTA should be deemed to have been tolled on equitable grounds prior to 1979. This contention is without merit. The Court stressed in *City of New York* that principles of equitable tolling may be invoked in suits

against the federal government only "[w]hen application of the [tolling] doctrine is consistent with Congress' intent in enacting a particular statutory scheme" (slip op. 11). The bases for the Court's holding in *City of New York* that equitable tolling is consistent with the congressional intent underlying the Social Security Act do not suggest that equitable tolling is appropriate in this case under the QTA.

First, the Court observed in *City of New York* that the 60-day limitations period in 42 U.S.C. 405(g) "is contained in a statute that Congress designed to be 'unusually protective' of claimants" (slip op. 11-12, quoting *Heckler* v. *Day*, 467 U.S. 104, 106 (1984)). The QTA does not manifest a comparable solicitude for persons who challenge the United States' title to real property, and there is no reason to believe that such claimants are in special need of the sort of protection that the Court afforded the class of mentally ill disability claimants in *City of New York*.

Second, the Court found it significant in *City of New York* that 42 U.S.C. 405(g) on its face permits the Secretary of Health and Human Services to toll the 60-day limitations period, "thus expressing its clear intention to allow tolling in some cases" (slip op. 12). The QTA, by contrast, does not authorize an Executive official to extend the time for filing suit and does not otherwise manifest a congressional intention to ~~allow~~ tolling in certain circumstances. Indeed, 28 U.S.C. 2409a(g) is unusually explicit in specifying when a cause of action accrues: when the plaintiff "knew or should have known of the claim of the United States." Where, as here, that statutory condition for triggering the limitation on suits under the QTA is satisfied, a court has no authority to toll the running of the limitations period.

Third, the Court stressed in *City of New York* that in addition to serving the usual purposes of a statute of limitations, the unusually short 60-day filing period under 42 U.S.C. 405(g) was designed "to move cases to speedy

resolution in a bureaucracy that processes millions of claims annually"—a purpose that "serves both the interest of the claimant and the interest of the Government" (slip op. 13). The Court concluded that judicial tolling of the 60-day period in "rare" Social Security cases would not undermine this additional statutory purpose of promoting administrative efficiency (*ibid.*). By contrast, the statute of limitations under the QTA was not intended to serve any additional purpose that protects the interests of the claimant and that might lend support to judicial tolling in certain circumstances. The QTA provision serves only the usual purpose of a statute of limitations—to protect the defendant (here, the United States) against stale claims. See *Block* v. *North Dakota*, 461 U.S. 273, 282-285 & n.20 (1983). That purpose would be substantially undermined by judicial tolling of the limitations period in this case.[5]

c. Even if equitable tolling were available on "rare" occasions under the QTA, as it is under the Social Security Act following *City of New York*, this case does not present an appropriate case for such extraordinary judicial intervention. In *City of New York*, the Court held that the 60-day period for seeking judicial review of the denial of

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[5] Petitioners contend (Pet. 35-37) that suits against the United States should be governed by the statute of limitations in 43 U.S.C. 1632(a), rather than that in the Quiet Title Act. The former provision states:

> [A] decision of the Secretary under * * * the Alaska Native Claims Settlement Act * * * shall not be subject to judicial review unless such action is initiated before a court of competent jurisdiction within two years after the day the Secretary's decision becomes final or December 2, 1980, whichever is later: *Provided*, That the party seeking such review shall first exhaust any administrative appeal rights.

As its language makes clear, this provision was intended to *limit* claims; it was not intended to *revive* claims that were already barred by another statute (*e.g.*, the QTA) before the Secretary rendered the relevant decision under ANCSA.

disability claims was subject to equitable tolling because a secret administrative policy prevented the class of mentally ill claimants from knowing of the violation of their rights. See slip op. 11-13. In this case, there is no suggestion of a secret policy that might have prevented petitioners from knowing of the alleged violation of their rights. Petitioners rely (Pet. 5-6, 39) on the 1959 letter from the Assistant Secretary (see page 3, *supra*) as a justification for equitable tolling. That reliance, however, is misplaced, because the information in the 1959 letter was accurate: the Assistant Secretary correctly informed petitioners that the land in question would not be open to homestead entry until the Department of the Interior officially declared it to be open; that the Department was conducting an engineering study of the area; and that any homesteading of the land prior to the revocation of the power site withdrawal was a nullity. *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 471 (1915); *Shiny Rock Mining Corp.* v. *United States*, 825 F.2d 216 (9th Cir. 1987).

Petitioners also argue (Pet. 4, 39) that the Secretary of the Interior had a duty to revoke the power-site withdrawal *immediately* after the FPC determined in 1952 that the land would not be injured for power development if it were opened to settlement and that the Assistant Secretary's 1959 letter was misleading because it did not inform petitioners of that supposed duty. But even if petitioners' view of the statutory scheme were correct, the Secretary's failure to revoke the power-site withdrawal immediately reflects nothing more than the fact that the Secretary took a different view of the law. Such a difference of legal opinion falls far short of the sort of affirmative misconduct that would be necessary to toll the running of the statute of limitations. Compare *United States* v. *Kubrick*, 444 U.S. 111, 123-124 (1979). Indeed, the first judicial decision addressing the question of the Secretary's duties following a no-injury determination was

Reeves v. *Andrus*, 465 F. Supp. 1065 (D. Alaska 1979), which was not rendered until after the statute of limitations had already run on petitioners' claims and many years after the FPC's no-injury determination at issue in this case. Moreover, *Reeves* did not hold that the Secretary had an inflexible duty to open such land to immediate settlement.[6] And in any event, the legal principles on which *Reeves* was based were as accessible to petitioners as they were to the government. There accordingly was no "secret" governmental conduct in this case, as there was in *City of New York*. Thus, the Assistant Secretary's routine expression of the Department's legal views in 1959 does not amount to the "rare" instance of affirmatively misleading conduct that was found to justify judicial tolling in *City of New York*—even if we assume that the tolling principles articulated in that case are applicable in cases arising under the QTA.[7]

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[6] *Reeves* was brought by an individual who desired to homestead land that was the subject of a power site classification, but that the FPC had declared was not needed for power site purposes. The court in *Reeves* held that the Secretary should not have continued to reserve the land under Section 24 of the Federal Power Act. But the court further held that Section 24 is not self-executing and that the Secretary might well withdraw the land from settlement for some other reason (465 F. Supp. at 1070):

> This does not mean that the Secretary must instantly implement the Commission's decision. In fact, 16 U.S.C. § 818 provides for a ninety day period after notice in which the State can exercise a preference right to the land. This ninety day period would allow the Secretary to determine whether there are any other public values or interests in the land that require the site to be withdrawn from entry under other powers possessed by the Secretary.

[7] In *Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231 (1959), upon which petitioners rely (Pet. 38-39), the Court held that equitable tolling was proper because the defendant had affirmatively misled the plaintiff with respect to the time within which the plaintiff could file suit. Here, there is no suggestion that any government official misled petitioners regarding the running of the statute of limitations.

2. Petitioners further contend (Pet. 16-34) that even if their suits against the United States were properly dismissed, their suits against the Native corporations should have been permitted to proceed. In petitioners' view (see Pet. 21-24), this result is required by certain decisions of this Court, rendered long before passage of ANCSA in 1971 and the QTA in 1972, that permitted a suit seeking to establish a constructive trust over land for which a patent was erroneously issued by the United States, even though the United States was not a party. See, *e.g.*, *Duluth & Iron Range R.R.* v. *Roy*, 173 U.S. 587 (1899), and *Ard* v. *Brandon*, 156 U.S. 537 (1895). Petitioners likewise argue that the court of appeals' decision erroneously permits the statute of limitations in the QTA to bar suits against private parties. Pet. 27-34. These arguments, however, miss the significance of the particular factual circumstances and statutory framework that govern this case.

The question whether a suit should be dismissed because of the absence of an "indispensable" party is governed by Rule 19 of the Federal Rules of Civil Procedure. Rule 19(a) sets forth the conditions for determining if a person ought to be joined as a party,[8] and Rule 19(b) describes the conditions under which a suit should be dismissed if joinder is not possible.[9]

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[8] Rule 19(a) states:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest * * *.

[9] Rule 19(b) states:

> If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and

The United States is a party that should be joined under Rule 19(a), because it has an "interest" relating to petitioners' suits against the Native corporations that would be impaired if petitioners were to prevail on the merits of their claims against the corporations. This interest arises primarily from Sections 12 and 14 of ANCSA, 43 U.S.C. 1611 and 1613, which entitled Eklutna to receive 92,160 acres of land from the United States.[10] The parcels at issue in this case have been selected by Eklutna under those provisions of ANCSA. Under the administrative scheme adopted by the Secretary to implement ANCSA, if petitioners succeed in this case and thereby deprive Eklutna of its title to the land, Eklutna would be entitled to receive other land from the United States to compensate for that loss of its statutory entitlement.[11] Petitioners in fact ex-

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good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

[10] Generally, respondent Cook Inlet is entitled to the mineral rights in the land selected by Eklutna. See 43 U.S.C. 1613(f).

[11] Under regulations implementing ANCSA, Native corporations were permitted to "overselect" lands prior to the December 18, 1974 statutory selection deadline in 43 U.S.C. 1611(a). As a result, if certain of the lands selected by a corporation proved to be unavailable (*e.g.*, because of prior existing rights), the corporation would have an opportunity to receive other lands from among those it had "overselected" as insurance against that eventuality. See 43 C.F.R. 2651.4(f), 2652.3(f).

pressly conceded as much in the court of appeals.[12] As a result, whether the United States will be deprived of additional land depends precisely on whether petitioners prevail in their suits against the respondent Native corporations. See *Provident Bank* v. *Patterson*, 390 U.S. 102, 108 (1968).[13]

Rule 19(b) provides that if a person described in Rule 19(a) cannot be made a party, the court must determine whether "in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." Rule 19(b) identifies four factors that are "include[d]" among those that must be considered in making this determination. The first factor is the extent to

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[12] Petitioners acknowledged that by virtue of the "overselection" procedure discussed in note 11, *supra*, the respondent Native corporations would be entitled to receive additional land from the United States if petitioners prevailed on their claims against the corporations (C.A. Br. 38 (footnotes omitted)):

> The fact is that appellees' entitlements will not be reduced. Since withdrawals and selections under ANCSA are to be from "public lands", §§ 3(e), 11 and 12 of ANCSA, appellants' lands could not be counted against Eklutna/Cook Inlet's total entitlement. Eklutna/Cook Inlet are entitled to other lands up to their full acreage entitlements, and were entitled to overselect for this purpose. 43 CFR 2651.4(f).

[13] The United States comes within the scope of Rule 19(a) on another basis as well. The resolution of these cases would turn on a variety of factual and legal issues that directly implicate the interests of the United States—*e.g.*, whether the Secretary of the Interior erred when he determined that the land within the withdrawal area was not available for homestead entry, whether petitioners otherwise complied with the homestead laws, whether other persons would have had superior claims to the land, and whether petitioners abandoned their claims in the 1960's. In the normal course, all of these questions would be decided by the Secretary in the first instance under the doctrine of primary jurisdiction (see, *e.g.*, *United States* v. *Western Pac. R.R.*, 352 U.S. 59, 63-64 (1956); *United States* v. *Yellow Freight Systems, Inc.*, 762 F.2d 737, 739 (9th Cir. 1985)), and the Secretary of the Interior would be a party to any suit seeking judical review of those decisions.

which a judgment will prejudice the absent party. Here, the prejudice to the United States is clear, and indeed was conceded by petitioners below. As we have just explained, if petitioners prevail in their suits against the Native corporations, the United States stands to lose title to an equivalent amount of land.

The second factor Rule 19(b) makes relevant is whether relief may be shaped to lessen the harm to the absent party. In this case, there would appear to be no way in which the United States' interests could be adequately protected by careful tailoring of the decree. Petitioners seek a ruling that the Native corporations hold the parcels in constructive trust for the benefit of petitioners and a judgment requiring the corporations to convey legal title to petitioners. If the district court were to enter such an order, the necessary consequence for the United States would be to trigger a claim for additional acreage by the Native corporations under the ANCSA selection procedures. Petitioners do not contend that the decree should be shaped to prevent that result by requiring the respondent Native corporations, rather than the United States, to bear the loss. That result would be unfair, since petitioners do not contend that the Native corporations were at fault; any alleged legal error in the circumstances of this case instead is attributable to the federal government in its administration of the public land laws.

The other two factors mentioned in Rule 19(b) are whether a judgment rendered in the United States' absence would be adequate and whether the plaintiff would have an adequate remedy if the action is dismissed for nonjoinder. These factors to some extent weigh in favor of allowing petitioners' suits against the Native corporations to proceed. We note, however, that the latter factor is scarcely compelling, because petitioners in fact *did* have an adequate remedy—a suit against the United States

under the QTA—but they voluntarily allowed the time for filing such a suit to expire.

In the end, Rule 19(b) requires a court to rely on "equity and good conscience" in determining whether a suit should be dismissed because of the absence of a necessary party. In this case, petitioners' problems are of their own making. At least by 1964, petitioners knew of the Interior Department's position that the land was not available for homesteading, yet they failed to bring any suit seeking judicial review of the Department's decision for more than 15 years. If petitioners had sued in a timely manner and prevailed, the parcels in question could have been excluded from the grants to the Native corporations, and the rights of the corporations would not have been implicated. And if petitioners had sued in a timely manner, the United States or the Secretary of the Interior could have been named as a defendant. In light of petitioners' lack of diligence, the court of appeals' conclusion that the United States is an indispensable party in this suit is amply supported by "equity and good conscience."

In any event, the question whether the particular statutory and regulatory provisions implementing the selection rights of Native corporations under ANCSA render the United States an indispensable party to this suit is not one of general importance warranting review by this Court. The statutory deadline for Native corporations to make selections of land under ANCSA was December 18, 1974 (43 U.S.C. 1611(a)), and suits challenging the Secretary's decisions with respect to such selections are barred unless filed within two years of the decision or December 2, 1980, whichever is later (43 U.S.C. 1632(a)). The issue presented here therefore cannot be expected to arise with any frequency in the future.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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